

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE RULES OF CIVIL PROCEDURE

2015 Me. Rules 10

Effective: September 1, 2015

All of the Justices concurring therein, the following amendment to the Maine Rules of Civil Procedure is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 63 of the Maine Rules of Civil Procedure is deleted and replaced with the following:

RULE 63. INABILITY OF A JUDGE* TO PROCEED; RECUSAL

(a) Inability to Proceed. If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(b) Recusal.

Recusal means the withdrawal of a judge from any involvement in a case. It is sometimes referred to as “disqualification.”

(1) *On the Court’s Initiative.* A judge may recuse on the judge’s own initiative if the judge determines that recusal is appropriate pursuant to the Code of Judicial Conduct.

* As used in this rule, “judge” refers to a judge of the District Court, a judge of the Probate Court, a justice of the Superior Court, a justice of the Supreme Judicial Court, or a Family Law Magistrate.

(2) *On the Motion of a Party.* A party may move for a judge to recuse if the party has a good faith basis for requesting recusal. The grounds for requesting a recusal are stated in the Code of Judicial Conduct.

(A) *Assertion of Grounds for Recusal and Affidavit Requirement.* When a party moves for a judge to recuse, the party must include in the motion an assertion of the factual grounds supporting recusal and file with the motion one or more affidavits demonstrating an evidentiary basis for those facts.

(B) *Determination of Recusal by the Court.* With or without a hearing, a judge may determine herself or himself to be recused. If the judge recuses in the matter, the judge may, but is not required to, set forth the reasons for recusing.

(C) *Denial of Motion to Recuse.* If a judge denies a motion to recuse, the judge shall briefly state the reasons for the denial in a written order, or orally on the record if the motion is made during the course of a proceeding that is being recorded, provided, however, that if a motion to recuse is made during or shortly before the start of an on-the-record proceeding, and the judge denies the motion, the judge need not state the reasons for denial of the motion until after the proceeding has been completed and the judge, or a jury, has issued any order or other ruling to conclude the proceeding.

(3) *Effect of Recusal.* Upon determining herself or himself to be recused, the judge shall not further participate in the proceeding unless her or his recusal is waived by the parties as provided in subdivision (c) below.

(c) Waiver of Recusal by the Parties.

(1) A judge who determines herself or himself to be recused may, after disclosing the basis for her or his recusal on the written or recorded record, ask the parties and their attorneys whether they wish to waive the recusal, except where the basis for recusal is as provided in paragraph (2) below. A waiver of recusal shall recite the basis for the recusal and shall be effective only when signed by all parties and their attorneys and filed in the record.

(2) There shall be no waiver of recusal if the basis therefor is any of the following:

(A) The judge has announced a personal bias or prejudice concerning a party;

(B) The judge has more than a de minimis pecuniary interest in the subject of the litigation;

(C) The judge served as an attorney in the matter in controversy; or

(D) The judge has been a material witness concerning the matter in controversy.

(3) If grounds for recusal are first learned of or arise after the judge has made one or more rulings in a proceeding, but before the judge has completed judicial action in a proceeding, the judge shall, unless the recusal is waived, recuse herself or himself, but in the absence of good cause, the rulings she or he has made up to that time shall not be set aside by the judge who replaces the recused judge.

(d) Appeal. A judicial ruling denying a motion to recuse may be appealed in the ordinary course. Such a ruling is not an immediately appealable order and may be reviewed by appeal only after the entry of a final judgment.

Advisory Note – July 2015

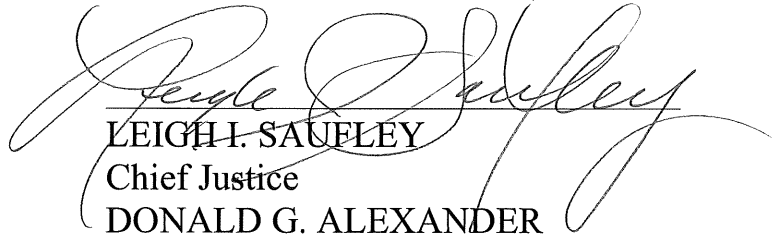
The purpose of this amendment is to clarify for parties to proceedings and other interested persons the process to be followed when a judge is unable to proceed or when a question of disqualification or recusal arises. Subdivision (a) is the current Rule 63, essentially unchanged. Subdivisions (b), (c), and (d) address the process to be followed when there is a question of recusal or disqualification of the judge. The standards for recusal or disqualification are set forth in the Maine Code of Judicial Conduct at Rules 2.11 and 3.11 (effective September 1, 2015). The recusal provisions of Rule 63(b), (c), and (d) are identical to the recusal provisions of Rule 25(b), (c), and (d) of the Maine Rules of Unified Criminal Procedure.

Rules 2.11 and 3.11 of the Maine Code of Judicial Conduct and the Advisory Notes to those Rules provide guidance for application of the revised Rule 63 and should be consulted when questions arise regarding disqualification and recusal issues.

2. This amendment to the Maine Rules of Civil Procedure shall be effective September 1, 2015.

Dated: July 14, 2015

FOR THE COURT*

A large, stylized handwritten signature in black ink, which appears to read "Leigh I. Saufley", is written over the printed name and title of the Chief Justice.

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

JEFFREY L. HJELM

THOMAS E. HUMPHREY

Associate Justices

* This Rules Amendment Order was approved after conference of the Court, all Justices concurring therein.